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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINZENZ J. KOLLER, an individual and Presidential) Case No. 5:16-cv-07069
Elector,)

Plaintiffs,

v.

JERRY BROWN, in his official capacity as)
Governor for the State of California; KAMALA)
HARRIS, in her official capacity as Attorney)
General for the State of California; ALEX)
PADILLA, in his official capacity as Secretary)
of State for the State of California; and DOES 1-)
10;)

Defendants.)

**NOTICE OF MOTION AND
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Date:
Time:
Courtroom:
Judge:

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____ at _____ a.m., or as soon
thereafter as the matter may be heard in _____ of the above-entitled court
located at _____, Plaintiff will respectfully move and request a temporary
restraining order and preliminary injunction pursuant to Fed.R.Civ.P. 65(a) and (b).

Good cause exists for the requested relief as follows:

1. Plaintiff is a duly appointed Presidential Elector for the State of California,

1 scheduled to place his votes for President and Vice-President on December 19, 2016;

2 2. Current California law - *Election Code* §§ 6906 and 18002 – call for a
3 criminal penalty against electors who fail to vote for their respective party’s candidate,
4 irrespective of the circumstances.

5 3. These statutes are unconstitutional, violating the U.S. Constitutional
6 obligation of electors to act as a deliberative body, analyzing the fitness of prospective
7 candidates for those offices, and judiciously acting on relevant information before placing
8 their votes.

9 4. These statutes are in violation of federal and state laws prohibiting and
10 criminalizing coercion of votes.

11 5. These statutes are unconstitutional, violating the Equal Protection Clause of
12 the Fourteenth Amendment, because coercion of votes by electors from some states, but not
13 others, result in an inability of Plaintiff and other similarly situated electors to act in the
14 best interest of the citizens of their state.

15 6. These statutes are unconstitutional, violating the First Amendment right of
16 free speech.

17 7. Plaintiff wants to be free to place his vote in a manner best suited to ensuring
18 that a fit and qualified person be elected, even if that might require a vote for a political
19 party other than his own.

20 This Motion will be based upon this Notice, the accompanying Memorandum
21 of Points and Authorities, Declaration of Plaintiff Vinzenz Koller, Request for
22 Judicial Notice, the Verified Complaint, and any such other portions of the case file
23 in this case or other evidence is submitted to the Court.

24 25 **REQUEST FOR EXPEDITED HEARING**

26 Plaintiff requests that the sought TRO and preliminary injunction be
27 determined as soon as possible and that a hearing on this matter occur in advance of
28 December 18, 2016. A hearing and order must be issued before the electors meet on

1 December 19, 2016 to avoid irreparable harm.

2
3
4 DATED: Monday, December 12, 2016.

5 KRAMER LAW OFFICE, INC.

6
7 /s/ Melody A. Kramer
8 Melody A. Kramer, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On December 19, 2016, 538 American citizens will meet, in person, at their respective state capitols, to place votes for the persons they believe are most appropriate to ascend to the highest offices in our country, the offices of President and Vice-President.

Of those 538 Presidential Electors, 299 (56%), including Plaintiff, are required and coerced, under penalty of replacement and/or criminal sanction, to act as mere robots, placing votes for the winner of the popular vote in their states on November 8, 2016, irrespective of any fact, independent judgment, or knowledge in their possession regarding the integrity of the election itself or of the fitness or unfitness of any prospective office holder. The remaining 239 Presidential Electors (44%) are not under such coercion.

The entire point of this case is to remove the coercion being placed on Plaintiff to place a mere rubberstamp or ceremonial vote for the most important offices in the nation and to be able to join with the other 239 Presidential Electors who are currently free to exercise their Constitutional purpose of being deliberative, conscientious decisions makers in the interest of the entire country.

Electors must not be required to put a blindfold on at midnight on November 8th and ignore facts and evidence that come to their attention between that time and the time of placing their vote. For example, Plaintiff and other electors have learned that the CIA has concluded with "high confidence" that Russia sought to influence the U.S. election. President Obama and lawmakers in Congress have decided to conduct a bipartisan investigation into this matter.

Interference by a foreign government in U.S. elections is a serious matter, and ensuring that no one be put into the office of President or Vice-President that might be subject to foreign influence is part of the Electoral College job. Plaintiff takes this matter very seriously, and in fact is submitting a letter to President Obama today requesting that he

1 and all Electors be provided access to this information prior to December 19th so they may
2 judge for themselves whether these matters should be factored into their placing of votes.

3 As the law stands right now, 239 electors are legally allowed to consider the
4 possibility of foreign interference in our 2016 elections as part of their decision-making
5 process on December 19, 2016, but Plaintiff and 298 other Electors are coerced through
6 state law to not consider this or any other information before placing their vote.

7 Currently 29 states (which account for 299 electoral votes), including California,
8 have state laws that bind presidential electors to do no more than place a ceremonial vote in
9 accord with their party affiliation or pre-election pledge. Electors in at least two other states
10 - Colorado and Washington – are also currently seeking relief from state statutes that
11 interfere with their right to place their votes in the best interest of the country, even if they
12 might not be consistent with their party affiliation.

13 The relief sought here is narrow – temporary restraining order and preliminary
14 injunction (and eventual declaratory relief and permanent injunction) holding that *Election*
15 *Code* §§ 6906 and 18002 are unconstitutional and also that intimidation, threats, and
16 coercion on Presidential Electors are already criminalized by 18 U.S.C. § 594 and *Election*
17 *Code* § 18540(a).

18 Plaintiff is forced to bring this legal action and request a preliminary injunction to
19 protect his rights against possible prosecution, but also to protect the Constitution, and the
20 Republic.

21 22 **STATEMENT OF FACT**

23 Plaintiff was nominated and duly selected to be a Presidential Elector for 2016 by
24 the members of the California Democratic Party. See *Koller Decl.*, ¶ 2. He is scheduled
25 to place his votes for President and Vice-President on December 19, 2016. *Id.* ¶ 3.

26 Although Plaintiff Mr. Koller is a long-time and loyal Democrat, he understands that
27 his job as Elector is not that of an automaton, but rather a thinking, reasoning, decision
28

1 maker selected to be part of the Electoral College who will place votes for President and
2 Vice-President.

3 Plaintiff has the right and obligation under the U.S. Constitution, Art. II, Sec. 1, as
4 an elector, to vote for the candidates that he believes are most fit and qualified to run this
5 country, even if that means voting for someone other than the Democratic nominees if
6 doing so is consistent with the larger purpose of ensuring the best person ascends to the
7 highest offices in the Executive Branch.

8 Federal election laws prohibit, upon pain of criminal sanction, intimidating,
9 threatening, or coercing Plaintiff in his vote choice for President and Vice-President.

10
11 Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten,
12 or coerce, any other person for the purpose of interfering with the right of
13 such other person to vote or to vote as he may choose, or of causing such
14 other person to vote for, or not to vote for, any candidate for the office of
15 President, Vice President, . . . at any election held solely or in part for the
16 purpose of electing such candidate, shall be fined under this title or
17 imprisoned not more than one year, or both.

18 18 U.S.C. § 594.

19 Likewise, *California Election Code* § 18540(a) also bans and punishes anyone who
20 “makes use of or threatens to make use of . . . tactic of coercion or intimidation, to induce or
21 compel any other person . . . to vote or refrain from voting for any particular person . . . at
22 any election . . .”

23 Notwithstanding the clear intent that nobody should be coercing any type of voter for
24 any type of election, two other California statutes do just that. *Election Code* § 6906
25 instructs presidential electors to “vote by ballot for that person for President and that person
26 for Vice President of the United States, who are, respectively, the candidates of the political
27 party which they represent, one of whom, at least, is not an inhabitant of this state.”
28 *Election Code* § 18002 then sets forth a penalty of a fine not to exceed \$1,000 or
imprisonment for “every person charged with the performance of any duty under any law of
this state relating to elections, who willfully neglects or refuses to perform it, or who, in his

1 or her official capacity, knowingly and fraudulently acts in contravention or violation of
 2 any of those laws ...”The Defendants, as the highest officials in the State of California
 3 tasked with enforcing its laws, including election laws, could initiate criminal prosecution
 4 against Plaintiff under *Election Code* §§ 6906 and 18002 if he does not vote for a
 5 specific set of candidates, regardless of the reason. While Plaintiff may vote for them,
 6 Plaintiff has a constitutional right to vote for whomever he freely chooses and cannot be
 7 compelled to vote for any candidate.

8 The issues raised in this most recent election cycle are extensive and unique in our
 9 nation’s history, even though the action of electors to not vote in accord with the popular
 10 vote in their state is permissible, and no unprecedented, though infrequent. Plaintiff seeks
 11 the ability to exercise his constitutional rights and obligations with respect to his role as
 12 presidential elector so as to consider all options available without fear of punishment.

13 14 ARGUMENT

15 I. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION.

16 “A plaintiff seeking a preliminary injunction must establish that he is likely to
 17 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
 18 preliminary relief, that the balance of equities tips in his favor, and that an injunction is
 19 in the public interest.” *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 19 (2008).

20 21 A. Likelihood of Success on the Merits.

22 “Obviously we must reject the notion that Art. II, § 1, gives the States power to
 23 impose burdens on the right to vote, where such burdens are expressly prohibited in
 24 other constitutional provisions.” *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

25 Plaintiffs are substantially likely to prevail on the paramount issue that California’s
 26 elector binding and penalizing statutes, *Election Code* §§ 6906 and 18002, are
 27 unconstitutional because they violate Article II of the U.S. Constitution, as amended by
 28 the Twelfth Amendment, violate both federal and state election laws, violate the Equal

1 Protection Clause, and compel speech in violation of the First Amendment's right to
 2 freedom of speech.

3 1. *The Electoral College is Superfluous if Electors are Forced to Vote for*
 4 *Certain Candidates.*

5 "[P]olitical parties in the modern sense were not born with the Republic. They
 6 were created by necessity, by the need to organize the rapidly increasing population,
 7 scattered over our Land, so as to coordinate efforts to secure needed legislation and
 8 oppose that deemed undesirable." *Ray v. Blair*, 343 U.S. 214, 220-21, (1952).¹ "The
 9 presidential electors exercise a federal function in balloting for President and Vice-
 10 President but they are not federal officers or agents any more than the state elector who
 11 votes for congressmen. They act by authority of the state that in turn receives its
 12 authority from the Federal Constitution." *Id.* at 224-25. Thus, though the states have
 13 authority to appoint electors pursuant to Article II § 1, that power cannot "be exercised in
 14 such a way as to violate express constitutional commands that specifically bar States
 15 from passing certain kinds of laws." *Rhodes*, 393 U.S. at 29.

16 The Court in *Ray* found requiring electors to sign a pledge to certain candidates was
 17 valid and constitutional, but explicitly left open the question of enforcement of statutes
 18 like California's –

19
 20 However, even if such promises of candidates for the electoral college are
 21 legally unenforceable because violative of an assumed constitutional
 22 freedom of the elector under the Constitution, Art. II, § 1, to vote as he
 may choose in the electoral college, it would not follow that the requirement
 of a pledge in the primary is unconstitutional.

23 *Ray*, 343 U.S. at 230.

24 Only electors vote for the President and Vice-President. *See* U.S. Const. Art II § 1;
 25 U.S. Const. Amend. XII. A state imposed restriction that adds conditions to requirements

26
 27 ¹ *Ray* came about when the Democrats in Alabama in the 1948 presidential election refused to
 28 vote for Truman because of the pro-civil rights platform, and, instead, voting for Strom
 Thurmond and forming the Dixiecrats. The party thereafter instituted a pledge for electors that
 they vote for the party's nominee.

1 set forth in the Constitution (such as state imposed term limits for US Senators) “is contrary
 2 to the ‘fundamental principle of our representative democracy,’ embodied in the
 3 Constitution.” See *US Term Limits v. Thornton*, 514 U.S. 779 (1995).

4 The electoral college was created to be separate, a “small number of persons selected
 5 by their fellow-citizens ... most likely to possess the information and discernment
 6 requisite to so complicated an investigation” who choose the President and Vice-President.
 7 The *Federalist* No. 68, at 412 (Alexander Hamilton) (Clinton Rossiter ed., 1961). The
 8 electors act “under circumstances favorable to deliberation.” *Id.* The electors would be
 9 insulated from “mischief,” “tumult,” and “disorder.” *Id.* The electors would be less
 10 exposed “to heats and ferments” of the people. *Id.* The Electoral College creates an
 11 “obstacle ... to cabal, intrigue, and corruption.” *Id.* Chief among the reasons for the
 12 Electoral College was to prevent “foreign powers” from “gain[ing] an improper
 13 ascendant in our councils,” might be achieved “by raising a creature of their own to the
 14 chief magistracy of the Union.” *Id.* at 412-13. The electors were to “vote for some fit
 15 person as President.” *Id.* at 413. Thus, the country would be

16 “afford[ed] a moral certainty that the office of President will seldom fall to
 17 the lot of any man who is not in an eminent degree endowed with the
 18 requisite qualifications. Talents for low intrigue, and the little arts of
 19 popularity, may alone to suffice to elevate a man to the first honors in a
 20 single State; but it will require other talents, and a different kind of merit,
 21 to establish him in the esteem and confidence of the whole Union”

22 *Id.* at 414.

23 Statutes such as California’s, which require electors to vote for a party’s slate of
 24 candidates lest the elector be removed or otherwise punished, render the electoral college
 25 superfluous, which violates one of the basic canons of Constitutional law and statutory
 26 interpretation. See *Hurtado v. California*, 110 U.S. 516, 534 (1884) (absent clear reason, a
 27 court cannot assume a part of the Constitution is superfluous). The Founders did not draft
 28 the Constitution so that the President and Vice-President were directly elected by the
 majority of the popular vote. At most, “the sense of the people should operate in the

1 choice of” President. *Id.* Instead, they created the Electoral College.

2 If the electors in California are required to vote for the candidate of the party that
3 wins the majority of the popular vote in California, the electors serve no purpose and are
4 rendered superfluous. After all, what’s the point of electors if they serve only as a rubber
5 stamp for the popular vote? What is the point of meeting together at an appointed
6 time and place if there is nothing being done beyond a ceremonial vote casting?
7 Surely there can be no “deliberation” as a rubber stamp, for there is nothing to
8 deliberate about. No “investigation” can occur if there’s nothing to investigate because
9 the electors have no say in who becomes President. There’s no need to insulate
10 electors from the “mischief,” “tumult,” “disorder,” “heats and ferments” of an election
11 and the populace if they are forced to vote for the same people that “won” the majority
12 vote by exploiting such heats, ferments, and disorder.

13 In Federalist No. 68, Hamilton admitted the electoral college system he had helped
14 create was not “perfect” but it was “at least excellent.” *Id.* Through the early part of the
15 Republic, the Founders realized some flaws in Article II, Sec. 1 and it was ultimately
16 amended by the Twelfth Amendment, which changed the means by which the House
17 and Senate voted. Despite the significant changes to the machinations of the electoral
18 college, nothing changed the fact that the electors were to remain an independent,
19 deliberative, and investigative body. *See* IS THE UNIFORM FAITHFUL
20 PRESIDENTIAL ELECTORS ACT CONSTITUTIONAL?, 2016 Cardozo L. Rev. De
21 Novo 129, 132-133, 147-148.

22 Plaintiffs are substantially likely to succeed on their claim because *Election*
23 *Code* §§ 6906 and 18002 undermine, are inconsistent with, and render superfluous the
24 Electoral College called for in Article II, Sec. 1 of the Constitution and the Twelfth
25 Amendment.

1 2. *Coercion of any voters violates federal and state election laws.*

2 Not only are *Election Code* §§ 6906 and 18002 in violation of the U.S. Constitution
3 as discussed above, but they are also in violation of federal election laws, namely 18 U.S.C.
4 § 594 which explicitly bans any type of intimidation, threat, coercion, or attempts thereof
5 for the purpose of interfering with the right “to vote for, or not vote for, any candidate for
6 the office of President, Vice President . . . at any election held solely or in part for the
7 purpose of electing such candidate.” In plain terms, this statute applies to the electoral
8 college and votes placed by electors for President and Vice-President. How is a statute
9 dictating how an elector will vote on December 19th, and threatening fines and jail if they
10 do not vote a certain way *not* the type of coercive conduct prohibited by this statute?

11 Because *Election Code* §§ 6906 and 18002 also violates 18 U.S.C. § 594 by
12 constituting illegal coercion of votes for President and Vice-President, Plaintiffs have a
13 substantial likelihood of succeeding on the merits.

14
15 3. *Coercion of voting against electors from some states, but not others,*
16 *results in a violation of the Equal Protection Clause of the Fourteenth*
 Amendment.

17 “No state shall make or enforce any law which shall abridge the privileges or
18 immunities of citizens of the United States; nor shall any state deprive any person of life,
19 liberty, or property, without due process of law; nor deny to any person within its
20 jurisdiction the equal protection of the laws.” U.S. Constitution, Art. XIV, Sec. 1.

21 At the current time, 21 states who account for 239 electors to the Electoral College
22 do not have any state statutes binding electors or punishing them for crossing party lines
23 when they place their electoral votes. However, 29 states, accounting for the remaining
24 299 electoral votes, including California, have statutes that coerce or force electors to vote
25 in a certain way. See *Request for Judicial Notice*.

26 The entire purpose of the Electoral College as described above is to be a deliberative
27 and to a certain extent investigative body, but now only 21 states and 239 electors are
28 allowed to do that. Plaintiff, if he is to follow California state law, would be required to

1 ignore even the most flagrant evidence of foreign interference in an election or of a
 2 prospective candidate for President or Vice-President, or evidence of any problem with
 3 qualifications of each candidate. In fact, a prospective presidential candidate could literally
 4 shoot somebody in the middle of the street with hundreds of witnesses and he or she would
 5 not, under California election laws, lose a single electoral vote.

6 California should not be represented in the critically important job of selection of the
 7 President and Vice-President by electors who are being threatened by fine or jail if they do
 8 not vote along party lines regardless of the circumstances. California citizens (and the
 9 citizens of the other 28 states with similar statutes) would not be getting equal protection
 10 under the law, specifically 18 U.S.C. § 594.

11 12 4. *California's Binding Statute Violates the First Amendment.*

13 Alexander Hamilton tells us that electors are to vote their free will and the Founders
 14 were fearful of and keen to prevent a demagogue:

15 “dangerous ambition more often lurks behind the specious mask of zeal for
 16 the rights of the people than under the forbidden appearance of zeal for the
 17 firmness and efficiency of government. History will teach us that the
 18 former has been found a much more certain road to the introduction of
 19 despotism than the latter, and that of those men who have overturned the
 20 liberties of republics, the greatest number have begun their career by
 paying an obsequious court to the people; commencing demagogues, and
 ending tyrants.”

21 Federalist No. 1, Hamilton.

22 California's elector binding statutes, *Election Code* §§ 6906 and 18002, enable
 23 demagogues, compels the electors, in contravention of the First Amendment, to vote
 24 for them regardless of any investigation of knowledge of events or circumstances, and
 25 eliminates debate among the electors on the vital public issue of who should be President.
 26 In the current situation, Plaintiff and other electors are very keen to obtain more information
 27 about the official CIA reports confirming a substantial likelihood of interference by a
 28 foreign government in U.S. elections, a very serious matter. As things stands, Plaintiff and

298 of his fellow Presidential Electors shouldn't be allowed to consider any such evidence, but the remaining 239 Presidential Electors are.

"Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995). Such speech "occupies the core of the protection afforded by the First Amendment." *Id.* "When a law burdens core political speech, we apply "exacting scrutiny," and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." *Id.* at 347. There is a fundamental "right of qualified voters within a state to cast their ballots and have them counted." *U.S. v. Classic*, 313 U.S. 299, 315 (1941).

Any statute that requires people to vote a certain way eliminates political debate in violation of the First Amendment. The Electoral College's purpose is "deliberation" and "investigation." Federalist No. 68. Under California's binding statute, there is no deliberation or investigation to be done because the electors are bound to vote for specific candidates no matter what. Thus, *Election Code* §§ 6906 and 18002 improperly burden and punish an elector's core political speech. The law also improperly compels electors to vote in a certain way.²

The electors are appointed by private political parties. Thus, the state itself has little state interest in determining who they are and what they believe. The state is not a political party and has no interest in who people vote for. The state's only interest is running fair elections in which people are given as much opportunity to vote free from harassment or undue influence. For example, California has constitutional laws that prohibits electioneering within 100 feet of a polling place (*Election Code* § 18370) and

² Some might argue that restrictions on the right to vote are not subject to strict scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 432 (1992). However, these cases all deal with the procedure of voting, *i.e.*, early voting, voting identification, place of voting, etc. No case has ever found that laws compelling for whom someone votes are constitutional under any level of scrutiny. Put another way, no state law could be constitutional that requires people who registered as Republicans to vote only for Republicans. There's no difference between that hypothetical law and the statutes at issue here.

1 penalizes both financial exchanges for votes (*Election Code* § 18310) and threats,
2 harassment, intimidation or coercion of votes (*Election Code* § 18540(a)). These statutes
3 are constitutional, in part, because they protect the person's ability to vote for their
4 candidate of choice.

5 In contrast, *Election Code* §§ 6906 and 18002 **requires** coercion when it comes to
6 the electors – it requires that electors who don't vote a certain way to face criminal
7 penalties of a fine and/or imprisonment. It's difficult to imagine a more impermissible law
8 than one that requires someone to vote for a specific candidate. The concept is antithetical
9 to the notion of democracy, free speech, and the Electoral College.

10 This Court must find the challenged statutes advance a compelling state interest,
11 though none exists, and is narrowly tailored. No such law could be sufficiently narrowly
12 tailored because the law seeks to do that which cannot be done – compel someone to vote
13 a specific way through coercion and threats of fine and imprisonment. Tailoring the law to
14 require voters cast ballots for only a certain political party advances no state interest
15 because the State itself has no interest in which political party governs it (though its
16 agents and elected officials do).

17 Because *Election Code* §§ 6906 and 18002 violates the First Amendment,
18 Plaintiffs have a substantial likelihood of succeeding on the merits.

19
20 B. Irreparable Harm.

21 Once votes are placed by the electors on December 19, 2016, they cannot be undone
22 and the coercion involved in deciding who Plaintiff will vote for as President and Vice-
23 President can never be fixed. Thus, there is irreparable harm.

24 Plaintiff will suffer irreparable injury in not being able to perform the job for which
25 he has been chosen by the citizens of California without subjecting himself to possible
26 criminal prosecution if he does not vote as California law currently coerces him to do. The
27 California citizens' interests in having suitable persons become President and Vice-
28

1 President, and have their selected elector make that decision on their behalf that best meets
2 the circumstances present on the day he votes, will also forever be impaired.

3
4 C. Balance of Equities Tip in Plaintiff's Favor.

5 No hardship will occur to Defendants or the State of California if the requested
6 injunction is implemented. There will be no need to re-do the election. The election,
7 when it comes to the President and Vice-President, exists for the people to vote for the
8 electors, including Plaintiff. Though California voters cast their ballots for presidential
9 and vice-presidential candidates, they were voting for electors specific to political
10 parties/candidates. It is up to those electors, who have now been voted for by the
11 people, to choose the best candidates. That is the design of the Constitution.

12 In contrast, great hardship will occur to Plaintiff if the preliminary injunction is not
13 issued. Plaintiff became an elector to become personally involved in the political process
14 beyond simply voting on November 8, 2016. He believed he was well-suited to serve as
15 an elector to find and vote for the candidates best suited for the offices of President and
16 Vice-President. If the exercise of this Constitutional obligation and corresponding right
17 of free speech were prohibited or chilled by an unconstitutional state restriction on his
18 deliberation and eventual vote, Plaintiff will be barred from fulfilling his role as elector
19 and voting for the most fit and qualified candidates for the positions of President and Vice-
20 President.

21 D. Public Interest.

22 The requested preliminary injunction will not be averse to the public interest; in fact,
23 the public interest will be served by an injunction and would be greatly disserved if the
24 injunction is not issued.

25 The public has an interest in making sure that fit and competent leaders are elected.
26 Electors in 21 other states are free to choose to vote for the most viable, fit, and competent
27 persons for office, even if those persons are not the candidates of their party. Plaintiff should
28 have the same freedom. To force him to vote for candidates who may not prevail simply for

1 the sake of party allegiance, which the State has no interest in, harms the public's interest in
2 making sure electors do their constitutional duty – elect fit, competent, and qualified
3 candidates to the two top elected positions in the country.

4
5 **II. SECURITY IS UNNECESSARY.**

6 Federal Rule of Civil Procedure 65(c) requires that the Court consider imposing an
7 injunction bond for an enforceable order for preliminary injunctive relief, however, “the
8 district court may dispense with the filing of a bond when it concludes there is no realistic
9 likelihood of harm to the defendant from enjoining his or her conduct.” *Johnson v. Couturier*,
10 572 F.3d 1067 (9th Cir. 2009).

11 Defendants cannot show “a likelihood of harm” if the preliminary injunction issues,
12 and Plaintiffs have shown that absent an injunction their rights will be irreparably harmed.
13 Thus, Plaintiffs respectfully submit that no security is necessary.

14
15 **CONCLUSION**

16 For the reasons set forth above, Plaintiff respectfully requests that the Court issue a
17 preliminary injunction that prohibits the Defendants from forcing Plaintiff to vote for any
18 particular candidates for President or Vice-President in his role of Presidential Elector, or
19 initiating any criminal prosecution or other penalty against Plaintiff for violation of
20 *Election Code* §§ 6906 and 18002 thereby.

21 WHEREFORE, Plaintiff respectfully requests that the Court enter an Order
22 temporarily and preliminarily enjoining and restraining Defendants, and each of their
23 agents, and any and all persons under the control or in active concert or participation
24 with Defendants, jointly or severally, from compelling Plaintiff or any of his fellow
25 electors them to vote for certain candidates, precluding them from voting for any
26 candidates, or otherwise interfering with the vote of the electors on December 19, 2016.

27 Plaintiff furthermore requests the waiving of any security requirement of Fed. R.
28 Civ. P. 65(c).

1 Dated this 11th day of December 2016.

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3 By: /s/ Melody A. Kramer
4 Melody A. Kramer, Esq.
5 KRAMER LAW OFFICE, INC.
6 Attorney for Plaintiff
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